

imageBROKER Online Contract for Contributors

Version 2.1 dated January 01, 2019

Purpose of contract, concluding a binding contract, terms and definitions

1.1 Purpose of contract

This contract is intended to enable the company imageBROKER to market the images of the Contributor for mutual benefit.

1.2 Concluding a binding contract

Your signing of the imageBROKER online contract for Contributors, constitutes a binding declaration of your intention to enter into this contract with the firm imageBROKER. The details you provide in the course of the registration process are an integral part of the contract. Upon reviewing your application submission, imageBROKER will decide whether to accept you as a Contributor. Should this be the case, imageBROKER will accept your offer of contract, at which point this contract will become legally binding.

1.3 BVPA

imageBROKER is a member of BVPA, the Bundesverband professioneller Bildanbieter e.V. (Federal Association of Professional Image Providers) and is committed to its principles.

1.4 Terms and definitions

The definition of "imageBROKER" is as follows:

imageBROKER.com GmbH & Co. KG Bavariafilmpfad 7 82031 Grünwald Germany, Register Court: Munich Local Court, Register Number: HRA 117844, Managing and Personally Liable Partner: Lupo GmbH, Grünwald. Managing Directors of Lupo GmbH: Moritz Wolf, Klaus-Peter Wolf, Registry Court: Munich Local Court Registration No.: HRB 284102, VAT ID No.: DE360738446 or, if applicable, the legal successor (i.e. if the firm changes its legal status).

The definition of "Contributor" is as follows:

The person or firm who or which entrusts their images to imageBROKER for marketing purposes and who or which is legally authorized to do so.

The definition of "Partner" is as follows:

The person or company that backs imageBROKER on a commission basis in the marketing of images.

The terms "images" and "image material" include the following:

All photographic images, graphics, and illustrations, as well as visual representations of all art genres, in the form of digital data via the internet, or e.g. on paper, celluloid, analog and digital image carriers, on electronic image storage, film or video material, including image captions and all related material.

The definition of "images which have been accepted for commercial purposes" is as follows:

Images which the Contributor has provided to imageBROKER and which imageBROKER has not rejected.

The definition of "very similar images" is as follows:

All images from the same series which a normal observer would consider at first glance to be the same.

2. Grant of rights

2.1 Scope

This contract only applies to images which imageBROKER has accepted for commercial purposes. The Contributor is therefore free to market images, that are not the same or very similar, via other channels.

2.2 Scope of rights granted

imageBROKER is authorized to market accepted images in its own name and for its own account in accordance with its own pricing policies. To this Contributors grant imageBROKER rights of use relating to said images, unrestricted in terms of time, place and content, as well as simple (non-exclusive) right of use, also including the right to grant simple or exclusive rights of use to third parties or to transfer rights to third parties. Exclusive rights of use will only be transferred if the Contributor has granted permission. imageBROKER is not under obligation to make use of rights transferred.

The rights granted to imageBROKER include in particular the right to copy, reproduce, exhibit, distribute, alter, edit, and publish supplied material, whether partially or in its entirety, unrestricted in terms of time, place, and content. These rights can be exercised in the course of using any analog or digital assessment and marketing channels, e.g. with relation to print media, websites, other electronic formats, mobile devices, television, cinema and exhibitions or expositions, advertising, sales promotion, marketing in and on products, corporate communication, press articles, press releases, brochures,

reports, kits, programs or films, etc. This also includes all varieties and ranges of usage which may become technologically viable in the future or commercially usable.

The Contributor hereby assures that he/she is fully authorized to cede all the rights enumerated in this contract, and that he/she is in a position to fulfill all obligations stated in this contract in full. This implies that the Contributor guarantees no conflicting arrangements have been made which would exclude this contract, and that none will be made in the future. In particular, the Contributor guarantees that the image material he/she supplies is free of third-party rights and that use of the images supplied does not violate or infringe any personal rights or copyrights by its utilization.

2.3 Agencies are permitted to determine royalty-free (RF) prices

imageBROKER is permitted to determine pricing freely and independently. Contributors who are also agencies can give imageBROKER permission to determine RF prices.

2.4 Usage of supplied material free of charge for own promotion purposes

The Contributor allows imageBROKER and imageBROKER's Partners the gratuitous use of supplied image material for their own promotion purposes (e.g. in connection with advertising, catalogues, or websites).

2.5 Authorization to use names

The Contributor grants imageBROKER non-exclusive, but geographically unlimited rights to use the name, or if applicable the pseudonym or trademark, of the Contributor in connection with marketing the image material supplied. imageBROKER is permitted to transfer this right, free of charge, to clients and Partners.

2.6 Prosecution resulting from illegal usage

In cases of illegal usage of supplied image material by third parties, the Contributor grants imageBROKER the right to make all legal claims (especially those relating to injunctive relief, entitlement to information, compensation for damages, and cost reimbursement) in imageBROKER's own name and for imageBROKER's own account. imageBROKER is, in comparison, permitted to enact new regulations at its own discretion. Following deduction of costs and expenses incurred by imageBROKER, any resulting compensation payments will be treated as income according to paragraph "3. Royalty payments".

The Contributor is obliged to provide all reasonable support in any prosecution cases, in particular:

- The Contributor is under obligation to provide imageBROKER with all information on non-invoiced usage of supplied image material which comes into his/her knowledge. However, this does not become compulsory until a minimum of three months have passed since publication.
- The Contributor is under obligation to provide truthful and complete information and to supply written confirmation when appropriate at imageBROKER's request.

The Contributor will be liable for all damages suffered by imageBROKER arising from the Contributor's infringement of the aforementioned agreed obligations. This includes in particular legal and court costs incurred by imageBROKER, which imageBROKER considers or considered necessary based on information provided by the Contributor.

3. Royalty payments

3.1 Payment split

The Image Supplier will receive 50% of the revenues generated by imageBROKER for his/her images if s/he allows imageBROKER unrestricted worldwide distribution and does not market the same and very similar images through other picture agencies. Otherwise, the Image Supplier receives 40% of the revenues generated by imageBROKER.

In organizational terms, 50% or 40% of the split applies to all images in an account. If no picture agency is blocked in an account according to point 5 of this contract, the Image Supplier receives 50%. If at least one picture agency is blocked, 40%. It is possible for an Image Supplier to have several accounts with different splits under one contract.

The word "revenue" denotes net proceeds actually received. Both parties acknowledge that "net revenue" applies to the gross proceeds received after deduction of sales commissions, sales tax or VAT, foreign tax withheld, and special bank fees such as check payment fees, as well as costs incurred as a result collection or detection and prosecution of unlawful usage of image material.

If more than one image is licensed within the context of an agreed flat-rate fee, calculation is based on the percentage of proceeds which corresponds to the percentage of the Contributor's images in the number of images licensed in total by the client.

For very long-standing Contributor accounts where a more favorable payment split has applied, this payment split will continue for the time being. The reason for such payment splits was the fact that Contributors were obliged to deliver their own keywording and descriptions in the early days of imageBROKER.

In the event that imageBROKER needs to re-keyword at least 90% of the Contributor's images in said accounts due to, for example, a number of important Partners who only accept images based on new keywording guidelines, imageBROKER is then entitled to

change the split to 50/50.

3.2 Quarterly balance statements

imageBROKER will provide quarterly revenue statements / sales reports and will make payments within 30 days.

Settlement is conducted through a credit note and through transfer of this amount to the Contributor to a bank account designated by the Contributor. For accounts in countries excluded from the Single European Payment Area (SEPA), the cost of payment transfers will be charged to the Contributor. Alternative methods of payment (e.g. PayPal) is only permitted for Contributors who live outside of the SEPA zone.

Payments will be made in euros. The Contributor is responsible for paying taxation on any and all payments received.

3.3 Inspection rights

Should the Contributor question the accuracy of settlement, he/she may commission an authorized expert who is bound to observe professional secrecy (tax consultant, financial auditor, or lawyer) to review the accounting documents on the business premises of imageBROKER at their own expense. The Contributor must inform imageBROKER of such intentions at least two weeks before the proposed date of inspection. Should this examination result in a payment of arrears of more than 8% of annual payments to the Contributor, imageBROKER will bear the costs of the review if reasonable.

3.4 Right to offset

In the event of a breach of contractual obligations by the Contributor, imageBROKER is entitled to completely offset claims on outstanding bills or receivables against royalty payments as specified in this contract, until the receivables concerned have been retrieved. The claims must be communicated in writing to the Contributor.

4. Warranties, rights, and obligations of the signatory parties

4.1 Contributor's obligation to maintain and update address and financial data

The Contributor is responsible for the accuracy of his/her online-conducted address and financial data, including e-mail address, telephone number, VAT tax liability, VAT registration number, etc., and is under obligation to enter any changes in information immediately. Should imageBROKER incur any damages as a result of inaccurate or incomplete Contributor data, the Contributor is obliged to provide compensation.

4.2 Guarantee of accuracy and completeness of metadata

The Contributor guarantees the accuracy and completeness of metadata, especially in relation to image descriptions and concerning the date images were taken. This includes a guarantee that the information in the EXIF data has not been deleted or manipulated.

4.3 Right to modify metadata

imageBROKER reserves the right to delete or change metadata if imageBROKER is of the opinion that it is incorrect. In particular, imageBROKER reserves the right to edit image descriptions so that they comply with imageBROKER's guidelines (see FAQ for Contributors).

4.4 Right to choose the licensing model: RM, RF, and MS

The Contributor may determine which licensing model should be used for the marketing of his/her images, or the Contributor may leave this decision to imageBROKER:

Rights Managed	„RM“
Royalty Free (license free)	„RF“
Microstock (lower-priced, license free)	„MS“

This means imageBROKER can also market images which the Contributor has already independently given over to a microstock agency.

For RF images that are already online or RF images that will go online, the Contributor may determine if these images should be marketed as MS if, for example, they have produced no sales over a long time period.

4.5 Obligation to prevent marketing of the same and/or very similar images under different licensing models

Contributors are not permitted to submit the same and/or very similar images for marketing purposes under different licensing models. If the Contributor uses other services to market the same and/or very similar images which he/she has submitted to imageBROKER under a certain licensing model, then he/she is under obligation to use this same licensing model.

Once imageBROKER markets images as microstock, these images will be denoted with the letters "MS" online, visible to Contributors when they are logged in.

4.6 Obligation to provide notification of usages

The Contributor is under obligation to inform imageBROKER of exclusive usages of images for calendar covers and book covers under agreements in which imageBROKER is not involved.

4.7 Right to deletion images

The Contributor has the right to request the removal of an individual image or of all images which he/she has supplied, providing that there are compelling legal reasons. It can take up to 180 days for images to be deleted by all our Partners. Any and all costs incurred in the course of the deletion process will be carried by the Contributor.

In such cases, paragraph 10.8 applies and rights of usage granted to third parties will remain even after the images have been deleted.

4.8 Obligation to refrain from business with end clients procured by imageBROKER

The Contributor is under obligation to refrain from concluding licensing agreements for identical or very similar images directly with end clients if this contact with end clients has arisen directly or indirectly through imageBROKER. This is especially applicable if end clients contact the Contributor after gaining information on his/her name from the imageBROKER website.

4.9 Legal consequences in cases of non-compliance

Observing the warranties, rights, and obligations described in Section 4.1 to 4.8 are fundamental prerequisites for successful cooperation. In cases of violation, the injured party will be entitled to insist that contractual obligations be fulfilled, that damages be paid, and for serious infringements that the contract be terminated without notice.

5. Rights of Contributor to grant rights of usage to third parties

5.1 Right to grant rights of usage

This contract is non-exclusive. This means that Contributors may grant rights of usage for the same or very similar images to third parties. However, any exclusive rights of use granted to imageBROKER must be observed under all circumstances.

5.2 Obligation to block photo agencies

It is imperative that agencies are not supplied with the same images twice. Therefore, the Contributor may instruct imageBROKER to block image delivery to certain photo agencies which are already supplied with the same or similar images, either directly by the Contributor or via a third party. In such cases, the obligations named in Section 5.4 to 5.6 apply.

5.3 Option to block certain countries, for Contributors who are also agencies

Contributors who are also agencies may instruct imageBROKER not to market their images via Partners in certain countries. In such cases, the obligations described in Section 5.4 to 5.6 do not apply.

5.4 Obligation to name blocked agencies before conclusion of contract

Prior to the closing of contract, the Contributor is obliged to fill out an online form naming all photo agencies (including all sub-agencies) in which he/her markets the same or very similar images to. imageBROKER will include these in a list of blocked agencies and will not deliver submitted images to these agencies. Contributors have continual access to this list when logged into his/her account on the imageBROKER website.

5.5 Obligations to be fulfilled by Contributors before supplying other photo agencies

Contributors are obliged to ensure that other photo agencies are not supplied with the same or similar images until the names of such agencies have been entered into imageBROKER's list of blocked agencies. In order to make such an entry on the list, the Contributor is obliged to provide imageBROKER with the name of such agencies (including all sub-agencies if applicable).

If, upon receipt of such notice, imageBROKER already works with the said agency, the Contributor will abdicate the right to supply this agency with the same or very similar images. He/ she will ensure that the same or very similar images will only be supplied to this agency via imageBROKER.

5.6 Blockage of photo agencies by imageBROKER

In the event that a collaboration between imageBROKER and the said agency does not yet exist at the time of notification, imageBROKER will enter the name of the photo agency into the list of agencies which are not to be supplied, and thus the Contributor will be permitted to supply this agency with the same or similar images.

5.7 Legal consequences in cases of non-compliance

In cases of violation of the rights and obligations stated in Section 5.1 to 5.6, the injured party will be entitled to insist that contractual obligations be fulfilled, that damages be paid, and that the contract be terminated without notice

6. Upholding of moral rights

6.1 Upholding of moral rights

To the extent which is customary and due in this branch of business, imageBROKER will adequately uphold and safeguard the Contributor's moral rights to the images supplied.

6.2 Right to author attribution

imageBROKER will inform its clients and Partners of the name or, if applicable, the pseudonym of the Contributor and will indicate that use of his/her image material is inherently to be accompanied by this name or pseudonym. imageBROKER is entitled to allow publication of image material without author attribution if this is justified or dictated by practical considerations and is common in the industry.

The Contributor hereby gives imageBROKER permission to add an additional reference to imageBROKER and/or Partners when images are published.

6.3 Claims due to failure to include author attribution

In each and every case, the Contributor will abstain from bringing claims based on failure to include author attribution against imageBROKER or against third parties who have acted with the consent imageBROKER.

However, in cases of legal prosecution on account of illegal use by third parties, imageBROKER is permitted to make claims on account of failure to include author attribution.

7. Details concerning the execution of contract

7.1 Web-based business procedures

imageBROKER's entire course of business is web-based. Detailed technical and organizational arrangements necessary for cooperation between Contributors and imageBROKER are provided on the imageBROKER website. Here, Contributors may also select their preferred choices, such as choice of licensing model.

7.2 Right to free choice

imageBROKER and its Partners may freely select whatever image material they wish. imageBROKER reserves the right to reject individual images or all images of a submission. For each image rejected, the Contributors will receive a short explanation of the reasons behind this decision. This is explained in detail in the online information. It is not possible to provide any further explanations due to time constraints

7.3 imageBROKER's right to delete images

imageBROKER reserves the right at any time, and at its sole discretion, to remove images from its archives and discontinue its marketing thereof and to delete the user account of the Contributor as well as ensuring that the image is deleted from the databases of Partners. This can, for example, be done due to legal reasons or because an image has technical flaws which were previously overlooked.

In such cases, Section 10.8 applies and the rights of any use granted to third parties will remain valid even if images are deleted.

7.4 Model and property releases

The Contributor will provide imageBROKER with digital copies of model and property releases (MRs and PRs). These releases are legally binding declarations of certification which cover all usage worldwide. All releases will be treated confidentially and are only accessible to employees of imageBROKER and its Partners. They may also be shown to interested clients.

7.5 No claims to specimen copies

The Contributor has no right to any specimen copies of publications of his/her images.

7.6 Website availability

imageBROKER is under no obligation to provide 7 day / 24 hour access to the imageBROKER website. The imageBROKER website has an average monthly availability rate of 95%, calculated on a 7 days a week and 24 hours a day basis. Should access be blocked for any reason, the Contributor will inform imageBROKER via another communication medium.

7.7 Website changes

imageBROKER will be entitled at its own discretion to carry out alterations or extensions to the imageBROKER website, or to replace it with a different medium of communication following prior notification to the Contributors.

7.8 No liability for loss of data

imageBROKER is not liable for loss of data or damage to images. The Contributor is responsible to secure backups of his/her images and of other data such as sales reports generated by imageBROKER.

7.9 No return of data storage devices

If Contributors send data storage devices, imageBROKER is under no obligation to return them.

8. Mutual indemnification clause and secondary contractual obligations

8.1 Indemnification of imageBROKER

imageBROKER shall indemnify the Contributor, as well as his/her employees against any damages, losses, costs or expenses which affect or have affected them resulting from claims, demands, liabilities, legal action, proceedings or acts resulting from violation of

obligations or warranties guaranteed by imageBROKER in this contract. This obligation applies even after the termination of this contract.

8.2 Indemnification of Contributor

The Contributor shall indemnify imageBROKER, as well as its employees and Partners, against any damages, losses, costs or expenses which affect or have affected imageBROKER resulting from claims, demands, liabilities, legal action, proceedings or acts resulting from violation of obligations or warranties guaranteed by the Contributor in this contract. The aforementioned obligation applies in particular to violations by third parties, as well as, to cases of misleading descriptions of supplied images. This obligation applies even after the termination of this contract.

8.3 Secondary contractual obligations

The two contracting parties are in agreement that additional contractual obligations arise as a result of this contract, namely mutual support and consideration. In particular these include:

- Obligation of professional secrecy concerning internal affairs, and this also specifically includes imageBROKER's clients and Partners, as well as information concerning image sales.
- Obligation of the Contributor to always contact imageBROKER first concerning questions related to the marketing of imageBROKER images.
- Obligation of the Contributor to handle online access data with confidentiality and not to pass it on to third parties.

In cases of violation, the injured party may exercise the right to insist that contractual obligations be fulfilled, that damages be paid, and that the contract be terminated without notice.

9. Contract amendments

9.1 Enabling contract amendments

imageBROKER reserves the right to amend this contract. Contributors will be notified about forthcoming amendments at least 45 days before the amended contract is due to take effect. This notification will take place via email and will also be posted on imageBROKER's website under "Our latest news" in the "Welcome" section, which is viewable once the Contributor is logged in to his/her account.

Following the announcement of amendments to the contract, the Contributor has the right to object to the amendments in writing within a period of 45 days. In order to do so, imageBROKER requires the receipt of a signed paper document delivered by post or scanned as a .pdf and sent via e-mail. In the case of objection, imageBROKER will not accept any further images from the Contributor.

If the Contributor does not make use of his/her right of objection, it is assumed that approval has been given and the amendments will become a component of the contract. In the notification informing about the amendments, imageBROKER will make specific reference to the fact that consent will be assumed in the absence of objection.

9.2 Reasons for amendment of contract

Amendments may be rendered necessary due to changes in laws or ambiguities in interpretation that have emerged. Another possible reason for amendments of contractual terms may be altered market conditions. Such amendments merely serve to preserve imageBROKER's competitiveness. This particularly applies to the introduction of new fee structuring.

10. Duration, cancellation, and termination of contract

10.1 Ordinary cancellation

This contract will run for an indefinite period. It can be cancelled at any time upon written notice. For this, imageBROKER requires receipt of a signed paper document sent by post or scanned as a .pdf and sent via email. The cancellation will take effect at the end of the next calendar year plus one year, at which time the contract will terminate.

10.2 Extraordinary cancellation

The right to extraordinary cancellation remains unaffected. The same formal requirements hold valid for both extraordinary and ordinary cancellation. Both parties are entitled to cancel the contract for exceptional reasons if the other party becomes insolvent or has violated one of the essential contractual obligations, i.e. breaches of one of the major warranties or guarantees in this contract, and if a violation of this kind is not rectified by the perpetrator within two months following written notice by the injured party. For this, the submission of a signed paper document is required to be sent by post or scanned as a .pdf and sent via email.

10.3 Receipt of notice of cancellation of contract

imageBROKER will confirm receipt of the cancellation of contract by email. Following receipt of notice, imageBROKER will not accept any more images from said Contributor.

10.4 Termination of contract and deletion of images

The contract terminates on the date on which cancellation comes into effect. Upon termination, imageBROKER will delete all images

supplied by the Contributor from the imageBROKER website.

10.5 Cancellation of marketing procedures and deletion of images by Partners

Prior to the termination of the contract, imageBROKER will inform Partners in good time about the cancellation of the right to use the image material concerned, and will request them to discontinue marketing the images provided by said Contributor. Insofar as Partners have received image data, they will be asked to delete these within the specified time limit. In cases of extraordinary termination it can take up to 180 days after the end of the contract for all images to be deleted by Partners. On no account can imageBROKER be held liable for Partners who fail to delete images on time.

10.6 No right to image data transfer

Once the contract terminates, all claims to digital image data transfer are invalid.

10.7 No login after end of contract

The Contributor will no longer be able to log in to imageBROKER website following the termination of the contract.

10.8 Rights of usage granted to third parties remain valid

Following the termination of a contract, imageBROKER and its Partners will no longer permit rights of usage to end clients, with the exception of images which end clients have already downloaded before the termination date.

All rights of usage granted by imageBROKER or its Partners to third parties remain unaffected, even if the rights of usage for individual works were granted after the contract termination date or beyond. This applies in particular to reprints.

10.9 No infringements of use as stated in the contract even after termination

The Contributor gives assurance that he/she or the rights holder will not allow usages that conflict with the utilization rights previously granted by imageBROKER and its Partners even after the termination of contract. This applies in particular to previous transfers of exclusive rights.

10.10 Continued payment of fees following cancellation of contract

Upon the termination of the contract, incoming fees for usage will still be forwarded to the Contributor according to contractual terms.

10.11 Final deletion of accounts

If, following termination of contract, no fees for image usage have been paid to imageBROKER for 24 consecutive months, imageBROKER will conclude that no more fees will arrive in future. In such cases, the Contributor's accounts will be permanently deleted. From this point onwards, the said Contributor is not entitled to claim any further royalty payments from imageBROKER.

11. Final provisions

11.1 Standard contract for all Contributors

This contract is valid for all accounts of all Contributors, and replaces any already existing contracts.

11.2 Written form requirement

Verbal agreements are not valid. Amendments to this contract must be in writing. This also applies to any waiver of the requirement of written form. Both parties agree that adherence to the written form requirement demands delivery of a hand-signed paper document as a letter, or in the form of a scanned .pdf that is sent via email.

11.3 Agreement under German law and the jurisdiction of Munich, Germany

All legal relations between the two parties will be governed exclusively by the laws of the Federal Republic of Germany, to the exclusion of the UN Convention on the International Sale of Goods. Place of jurisdiction and place of performance concerning the legal obligations of both parties under this contract is, to the full extent permitted by law, Munich, Germany.

11.4 Severability clause

Should individual terms of this contract be invalid, the legal effectiveness of the other terms will remain unaffected. The invalid individual term will be replaced by an appropriate term which is legally viable and which comes as close as possible to the reason and purpose of the invalid term. The same holds valid for any omissions in the contract.